there urged, against the recovery, by the learned judge is, chiefly, that the plaintiff could not have been in the exercise of proper care at the time the accident occurred. But that is matter of fact, in regard to which experienced persons might differ; so much so that it must be regarded as proper to be submitted to the jury, as it was in the principal case. And the argument, which has been sometimes urged, in similar cases, that highways are not required to be so built, or repaired, as to insure the safety of runaway teams, is more plausible than sound. No one claims this, but only that highways shall be kept in such condition as to be safe for ordinary travel; and if damage occurs, through any deficiency in that respect, even where, by accident, and without the fault of the driver or owner, teams have broken away from immediate control, the corporation cannot be excused. But, of course, if the accident was through the fault of the owner or driver, or the team broke loose for want of proper caution or skill, or was not a fit team to bring upon the highway, or there was any other fault of the owner or driver contributing directly to the damages, there can be no recovery: *Howard* v. *North Bridgwater*, 16 Pick. 189.

2. The other point seems equally unquestionable and very nearly connected with the one just alluded to; viz.: that where the damage is the combined result of accident and the defectiveness of the highway, there is no reason why a recovery should not be had, provided there was no fault on the part of the plaintiff or his servants. This view seems to be maintained in *Palmer* v. *Andover*, 2 Cush. 600. But some of the late cases seem to hold that the damages must result solely from the defectiveness of the highway, and that towns or turnpike companies are not responsible for the consequences primarily caused or set in motion by some accidental occurrence: *Moore* v. *Abbott*, 32 Me. 46; *Moulton* v. *Sandford*, 51 Id. 127, Chief Justice APPLETON dissenting. We admit, of course, that if the primary cause of the damage was some defect in the plaintiff's travelling apparatus, or anything else for which he is responsible, and which he might have guarded against by the proper degree of care and watchfulness, he cannot recover, because he was himself in fault, in regard to a matter directly contributing to the loss: *Rowell* v. *Lowell*, 7 Gray 101. But we trust the profession and the courts will finally come to the conclusion, that travellers are not to be subjected to that stringency of watchfulness, in regard to the perfect security of their travelling equipage, which we require of passenger carriers, before they venture abroad, or else forfeit all right to demand secure highways. I. F. R.

Supreme Court of Errors of Connecticut.

PERRY *v.* THE SIMPSON WATERPROOF MANUFACTURING CO.

Upon a former trial between the same parties the counsel for the defendants, a corporation, had admitted their incorporation and that certain persons were officers of the company at a certain time, and the plaintiff had therefore introduced no proof upon these points. A second trial was had, previous to which the defendants gave the plaintiff notice that they withdrew their admission of the former trial. Upon the second trial the plaintiff, having given notice to the defendants to produce the records of the corporation in court, which they neglected to do, offered in evidence the admission of their counsel upon the former trial. *Held*, 1. That

the admission did not bind the defendants in such a way as to estop them from denying on the second trial the facts admitted on the first. 2. But that the admission was admissible in evidence, with all the circumstances in which it was made, as tending to prove the facts admitted.

ASSUMPSIT for the breach of a covenant of the defendants, an incorporated company, to employ the plaintiff in their service, and for services rendered under the contract; brought to the Superior Court in Fairfield County. A new trial having been granted in the case (37 Conn. R. 520), it was now tried upon the general issue, closed to the court, before GRANGER, J.

Upon the trial it was necessary for the plaintiff to show the legal incorporation of the defendants, and the fact that Simon Stevens was president, Edwin L. Simpson a director, and Abijah McEwen the secretary of the corporation, at the time of the making and breach of the contract, and he offered the testimony of Messrs. Seymour and Sanford, his counsel upon the former trial, to prove, and he did prove thereby, that upon the former trial Messrs. Treat and Blake, then counsel for the defendants, admitted those facts. The defendants thereupon offered to prove, and did prove, that the facts were admitted for the purposes of the former trial, and that several months before the present term of the court they had given notice to the plaintiff that the same facts would not be admitted upon the present trial, but would be denied. But it was proved on the part of the plaintiff that when notice was so given said Simpson and McEwen were both long deceased, and that the company had long ceased business; and that the plaintiff had given the defendants notice to produce on the present trial their records, books and files, showing or going to show the facts to be as claimed by the plaintiff, but that the defendants did not produce any books, records, papers or files of the company, and that the plaintiff was unable to find any of the same, and was unable to procure the testimony of the said Stevens. The plaintiff did however produce other oral testimony tending to show the facts above mentioned, and also produced in evidence a copy duly authenticated of a public record of the certificate of the incorporation of the company, the company being a New York corporation.

To the testimony offered by the plaintiff with regard to the admissions made on the former trial the defendants objected, but the court admitted the same, and thereupon rendered judgment for the plaintiff.

The defendants filed a motion for a new trial for error in this ruling of the court.

Treat and *Bullock*, in support of the motion.—The rule here must be the same as in attempts at settlement of controversies. An admission of a fact as a fact is admissible. An admission for the purposes of a settlement is not admissible: *Hartford Bridge Company* v. *Granger*, 4 Conn. 148; *Fuller* v. *Hampton*, 5 Id. 426; *Stranahan* v. *East Haddam*, 11 Id. 507. In *Sanford* v. *Clark*, 29 Conn. 457, the plaintiff, during the progress and for the purposes of a trial, acknowledged a debt barred by the statute. The court held that the admission did not remove the bar, because the plaintiff in what he said did not intend to make a new promise. A letter written by the adverse party, "without prejudice," is inadmissible: *Healey* v. *Thatcher*, 8 Car. & P. 388. An admission made conditionally is not admissible under different circumstances: 2 Stark. Ev. 27. Nor the admission of an attorney on one trial at a subsequent trial: *Weisbrod* v. *Chicago &c. R. R. Co.*, 20 Wis. 419. The reason given is that it is evident the admission was made only for the first trial. The Superior Court seems to have overlooked the distinction between qualified and unqualified, limited and unlimited admissions. Admissions in the course of a trial often save time and expense, and ought to be encouraged and limited to the purpose for which they were made. Suppose on the first trial a statement of the testimony of an absent witness had been made by the plaintiff, admitted by the defendant, and read in evidence, would either party be bound by it on another trial? Clearly not, because manifestly made by one party and admitted by the other solely for the purposes of that trial, although not so expressed, as in the case before the court. When a new trial is granted a case is as if it had never been tried. A new trial means a new trial, not a repetition of the old one. Neither party would be restricted to the former evidence, or to the same line of attack or defence. The reasons for a new trial may, and almost always do, materially change the position of the parties. In *Dewort* v. *Loomer*, 21 Conn. 245, it was holden that an attorney could not compromise a case. See also cases there cited. Certainly then an admission by an attorney ought not to be construed to the prejudice of a client. Suppose a client had discharged his attorneys on account of their ignorance or incompetency, manifested by unnecessary admissions injurious to him on the first trial. We submit that no well considered case can be found where oral admissions made in the progress and for the purposes of a trial have been holden admissible on another trial.

Sanford, contrà, cited *Elton* v. *Larkins*, 5 Car. & P. 385; *Wetherell* v. *Bird*, 7 Id. 6; *Goldie* v. *Shuttleworth*, 1 Campb. 70; *Young* v. *Wright*, Id. 139; *Milward* v. *Temple*, Id. 375; *Langley* v. *Lord Oxford*, 1 Mees. & Wels. 508; *Cook* v. *Barr*, 4 N. York 156; *Chamberlin* v. *Preble*, 11 Allen 370; 1 Greenl. Ev., §§ 27, 186, 205, 207; 1 Phill. Ev. 105; 2 Steph. N. P. 1626; Bigelow on Estoppel 10.

FOSTER, J.—We are quite prepared to give our assent to the doctrine insisted on by the defendants' counsel, at least so far forth as to hold that the admission of a fact, made on and for the purposes of one trial, does not bind the party thus making it, so as to prevent him from disputing the truth of that fact, at another trial. This however is not the question, certainly not the whole question, presented by this motion.

On the trial of this case it appears that it became necessary to prove the incorporation of the defendants, their existence, and that certain persons were officers of the corporation at a time specified in the declaration. To prove these facts the plaintiff offered evidence that, at a former trial, the defendants' counsel admitted them to be true. To the admission of this testimony the defendants objected, and offered proof that said facts were admitted for the purposes of the former trial, and that the plaintiff previously to the present trial had notice that the same would not again be admitted, but would be denied.

The court admitted the testimony, and we think correctly. What occurred at a former trial, so far as it throws light on the questions involved in the pending issue, made up and to be decided between the same parties, must be admissible in evidence. General rules regulating the admissibility of evidence require it. If at a former trial certain facts were admitted as true which it becomes important to prove in a subsequent trial, that such admission was made may be proved as a fact. Admissions by a party, or by an authorized agent, either in a court or out, may be given in evidence. But the circumstances surrounding the admission, the purposes for which it was made, and the conditions attached to it, may be fully shown. It may not infrequently happen that a party will not be bound by an admission, and will not be estopped from denying its truth. And in view of the showing on both sides, allowing each party to prove the whole truth, it will be for the triers to deter-

mine how the proof stands on the facts in controversy, on which the admission is claimed to bear.

These principles were acted on, subsequently, in the court below. They seem to us just and reasonable, and in harmony with the law of evidence.

A new trial is not advised.

In this opinion SEYMOUR, C. J., CARPENTER and PHELPS, JJ., concurred.

PARK, J., was of opinion that, inasmuch as it is found as a fact in the case, that the counsel for the defendants on the former trial expressly limited their admissions to the purposes of that trial, and so informed the counsel for the plaintiff at the time the admissions were made, thus making the limitation a part of the admissions themselves, they could not be regarded on the second trial, and that the evidence should have been excluded.

The decision in the foregoing case is one of practical importance, and if entirely sound will operate to hinder the making of such admissions, in future, for the purpose of a particular trial, since counsel would hesitate about making such admissions, if the fact of having made them at one trial might be given in evidence upon a future trial, after the agreement had been revoked or had expired by its own limitation, as proof or testimony tending to prove that the facts embraced in such formal admission were true for all purposes and to all time in the particular cause.

The whole proceeding seems to us too loose for practical purposes, and, at the same time, based upon a misconception of the law, and the most approved practice, upon the subject.

1. Such an admission, made, either generally in the particular action, or for the purposes of a particular trial, should always be in writing, signed by the counsel upon both sides, or, at the least, entered upon the minutes of the trial, by the presiding judge, and with the understanding and assent of both counsel, to the very terms of the admission, *ipsissima verba*. Nothing of this kind appears to have been done in this case. The admission, when merely oral, should always be regarded as *functus officio*, after the particular trial terminates; for no judge, who consults the decorum of his court, will ever consent to arbitrate between counsel, either as to the terms, or the effect, of their oral agreements. Unless the counsel agree, at the trial, as to the oral agreements made between them, concerning the trial, the court cannot regard them, in any sense, unless as a ground for postponing the trial.

2. If the agreement between counsel for the admission of certain facts, at the trial, be properly reduced to writing and filed in the cause, its force and operation must depend upon the intention of the parties making it; or, in other words, the fair import and construction of its terms, with reference to the subject-matter. A general agreement to admit certain facts, for the purpose of the trial of a cause, might naturally be construed to embrace all the trials of the action; and such admissions admit of no contradiction. As Mr. Greenleaf states it: "They are in general conclusive, and

may be given in evidence even upon a new trial;" citing *Doe* v. *Bird*, 7 C. & P. 61; *Longley* v. *Ld. Oxford*, 1 M. & W. 508. But, after this admission has performed its office, it becomes of no force, whatever, for any purpose. It is then no more than the conversations of counsel about the cause, and not evidence at all. Counsel have no general authority to bind their clients by general admissions about the cause, since they do not represent their clients in any such capacity. But in the other capacity, of framing the issue, and arranging what facts shall be conceded, and what proved, at the trial, they do represent them most directly and emphatically. The learned commentator on evidence lays this down very clearly in the section just referred to, citing *Young* v. *Wright*, 1 Camp. 139, 141, and many other cases. We should therefore entertain no question, that the dissenting judge, the present learned Chief Justice PARK, of that court, was entirely in the right in holding "that the evidence should have been rejected."

But the opinion of such a court is entitled to more weight than anything we could claim on behalf of our own views, and may very probably be correct, upon some ground which does not occur to us in our unassisted and brief examination. I. F. R.

Supreme Court of the United States.

EX PARTE JAMES S. ROBINSON.

The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power.

The Act of Congress of March 2d 1831, entitled, "an act declaratory of the law concerning contempts of court," limits the power of the Circuit and District Courts of the United States to three classes of cases: 1st, where there has been misbehavior of a person in the presence of the courts, or so near thereto as to obstruct the administration of justice; 2d, where there has been misbehavior of any officer of the courts in his official transactions; and, 3d, where there has been disobedience or resistance by any officer, party, juror, witness or other person, to any lawful writ, process, order, rule, decree or command of the courts.

The 17th section of the Judiciary Act of 1789, in prescribing fine or imprisonment as the punishment which may be inflicted by the courts of the United States for contempts, operates as a limitation upon the manner in which their power in this respect may be exercised, and is a negation of all other modes of punishment.

The power to disbar an attorney is possessed by all courts which have authority to admit attorneys to practice. But the power can only be exercised where there has been such conduct on the part of the party complained of as shows him to be unfit to be a member of the profession; and before judgment disbarring him can be rendered he should have notice of the grounds of complaint against him and ample opportunity of explanation and defence.

Mandamus is the appropriate remedy to restore an attorney disbarred where the court below has exceeded its jurisdiction in the matter.